

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.Rev.Pet.No. 308 of 1999()

CRRP.41/1997 of V ADDL.SESIONS COURT, ERNAKULAM
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REVN. PETITIONER:

M.C.JACOB,
MANAGING DIRECTOR,
KITEX LIMITED,
KIZHAKKAMBALAM.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS:

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1. M.P.PETER, S/O.POULOSE,
MEKKUMKUNNEL, VILNAGU,
KIZHAKKAMBALAM.
 2. STATE OF KERALA, REPRESENTED BY
THE S.I. OF POLICE, KUNNATHUNADU,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.RAMAKUMAR
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04/06/2007, THE COURT ON 25/09/2007 PASSED THE
FOLLOWING:

ORDER ON CRL.M.P.NO.1309/1999 IN CRL.R.P.NO.308/1999

CLOSED.

SD/- K.R.UDAYABHANU, JUDGE

25/09/2007

\\TRUE COPY\\

K.R.UDAYABHANU, J.

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Crl.R.P.No.308 of 1999-A
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Dated this the 25th day of September, 2007

O R D E R

The revision petitioner is 'A' party in the proceedings initiated by the Sub Divisional Magistrate, Muvattupuzha, under Section 145 Cr.P.C with respect to an extent of 13.25 cents of land in old Survey No.412/1 of Kizhakkambalam Village (Re-survey No.152/5 in Block No.27). 'A' party filed a complaint before the Sub Inspector of Police on 10/01/1996 alleging trespass on the previous day, that is, 09/01/1996 and that they set fire to waste materials dumped by the company 'A' in the above property and removed stones and other materials placed therein by 'B' party and others. It is also alleged that there is a granite compound wall constructed through the southern side of the property long back and also that the property is pledged with the State Bank of Travancore for availing loan. The extent mentioned in the complaint is 20 cents. Setting fire to the waste materials has allegedly taken place in the morning on 10/01/1996, the date of complaint. The case was also registered as Crime No.5/1996 for the offences under Sections 143, 147, 447, 427 read with Section 149 I.P.C. The complainant in the complaint has sought police protection in the matter. Subsequently, on 16/04/1996,

the Sub Inspector of Police filed a report before the Sub Divisional Magistrate under Section 145 Cr.P.C apprehending breach of peace and seeking that the property may be handed over to the possession of the receiver. On 30/05/1996, the Sub Divisional Magistrate issued preliminary order under Section 145(1) Cr.P.C directing the parties to appear before him and file written statement and adduce evidence with respect to the respective claims over property. Before the Sub Divisional Magistrate, the parties have filed statements and PWs.1 to 5 were examined on the side of 'A' party and 'B' party was examined as DW.1. They have also produced documents in support of the respective versions. The Sub Divisional Magistrate after considering the evidence in M.C.No.26/1996 as per order dated 09/10/1997 held that on the relevant date vide Section 145 Cr.P.C 'A' party was in possession and that it is only subsequently that 'A' party has been dispossessed and 'B' party constructed building and is residing there with family and directed 'B' party to hand over the property to 'A' party within two weeks.

2. In revision over the above order vide Crl.R.P.No.41/1997 the Sessions Judge found that the Sub Divisional Magistrate has grossly erred in finding that on the relevant date 'A' party was in possession

of the property and set aside the order of the Sub Divisional Magistrate. The Sessions Judge relied on recital in the complaint filed by the Managing Director of the company to the Sub Inspector of Police on 10/01/1996, wherein it is mentioned that on 09/01/1996, 'B' party has committed trespass into the property. Further, the Sub Inspector in his report dated 12/04/1996 submitted before the Sub Divisional Magistrate has mentioned that 'B' party and others has committed trespass into the property and further PW.1 has admitted in re-examination that on two months before 10/01/1996 the disputed property was in possession of the company, that is 'A' party. It was presumed that in view of the admission of PW.1 that two months prior to 10/01/1996 the property was in possession of the company, thereafter, that is from 10/01/1996 the revision petitioner/'B' party is in possession of the property. It was also noted that in view of the statement of DW.1 that he started construction in the property during the pendency of Section 145 Cr.P.C proceedings, he would have started construction in April or May 1996 and yet 'A' party did not obstruct or prevent the construction.

3. It is contended by the revision petitioner herein/'A' party that the finding of the Sessions Judge is absolutely erroneous. It is pointed

out that it is only on re-examination, that is, when questioned by the counsel for 'A' party that PW.1 has stated that on two months before 10/01/1996 'A' party was in possession of the property. The above question was asked by the counsel perhaps under a misconception as to the proviso to Section 145(4) Cr.P.C and that the same was asked only to reiterate that 'A' party company was throughout in possession of the property till the company was dispossessed subsequently during the pendency of Section 145 Cr.P.C proceedings. It is also pointed out that in the complaint to the police 'A' party had never mentioned that the alleged miscreants led by 'B' party had reduced the property into their possession but only informed about their trespass.

4. 'A' party had claimed title and possession of the disputed property as per assignment deed, Ext.A1, 481/1976, as per which property extending 2.10 acres and 775 sq. in Survey Nos.412/1, 412/2A and 412/2B of Kizhakkambalam Village was purchased by the then Managing Director of the company. The disputed 13.25 cents is part of the property described in Ext.A1. PW.2 Tahsildar has deposed that 'A' party has also produced tax receipts dated 02/12/1983 and 21/01/1986 for having paid land tax. On the other hand 'B' party

claimed title with respect to property in Survey No.412/1 as per Ext.B2 settlement deed No.6283/95, as per which his father had settled the property in his favour. According to 'B' party, the father of 'B' party got the property as per the partition deed No.263/1125 (M.E). The above document was not available to 'B' party. A copy of the same was produced by 'A' party. The Sub Divisional Magistrate has observed that in the partition deed that no property under Survey No.412/1 was obtained by the father of the 'B' party. No documents were also produced to show that the disputed property was in the possession of his father till the execution of Ext.B2 in 1995. No tax receipts for the previous period were also produced. PW.2, the Tahsildar has stated that the Taluk Surveyor has reported that old survey No.152/5 (Block No.27) is Sy.Nos.412/1 and 412/2B and that there was a mistake in the BTR and that actual persons in possession could not be identified. Ext.B1 certificate said to be the possession certificate issued by PW.3 although Ext.B1 is just a certificate issued by PW.3 the Village Officer for getting loan for self employment and not the possession certificate proper, the same was found to be not issued in the course of discharge of official duties of PW.3 as the above certificate is dated 01/06/1996, whereas he ceased to be the Village Officer of Kizhakkambalam from 31/03/1996. Both the courts

did not rely on the version of PW.3. DW.1 has produced the tax receipt of 08/04/1996 and the encumbrance certificate of 1996. The court below has also noted that he has stated that the building construction has commenced during the pendency of Section 145 Cr.P.C proceedings. The scene mahazar dated 10/01/1996 seen in the file shows that there is a retaining wall lying east-west on the southern side of the disputed property and also throughout the entire property claimed to be in possession of 'A' party. The Sub Divisional Magistrate has noted that 'B' party has no case that the retaining wall was constructed by the 'B' party. The scene mahazar also shows that the waste materials are seen dumped in the disputed property. PW.4, the Sub Inspector of police has stated in unambiguous terms that on the date of filing of the report before the Sub Divisional Magistrate, that is 12/04/1996, the company/'A' party was in possession of the property. The relevant date of possession as per the proviso to Section 145(4) Cr.P.C is within two months next before the date on which the report of the police officer was received by the Magistrate. The above date would be the date two months prior to 12/04/1996 which will be 11/02/1996. The finding of the Sessions Judge on the basis of the recital in the complaint filed by 'A' party before the Sub Inspector on 10/01/1996 that 'B' party and others have trespassed into

the property and committed nuisance and also on the basis of the deposition of PW.1 in the re-examination of the counsel for the 'A' party that two months prior to 10/01/1996, the company is in possession of the property appears to be clearly incorrect. It has to be noted that in the complaint before the police 'A' party has sought for police protection to retain the property in its possession and has not sought for evicting 'B' party from the property. The answer of PW.1 to the question in re-examination was only meant to reiterate the fact that 'A' party is in possession of the property throughout until dispossessed and has no relevance to the date contemplated in the proviso to Section 145(4) Cr.P.C. I find that the report of the Sub Inspector to the Sub Divisional Magistrate dated 12/04/1996 did not contain any statement that 'B' party is in possession of the property. PW.4, the Sub Inspector has deposed categorically that on 12/04/1996 'A' party was in possession of the property. The point stressed by the Sessions Judge that when 'B' party started construction 'A' party did not take any steps to prevent the same is not relevant in deciding the question of possession on the relevant date as per the proviso to Section 145(4) Cr.P.C. In the circumstances, I find that the decision of the Sessions Judge reversing the findings of the Sub Divisional Magistrate is liable to be set aside; and I do so. The decision of the

Sub Divisional Magistrate is restored. All the same, considering the fact that the respondent/'B' party has constructed house and is residing therein, execution of the order of the Sub Divisional Magistrate is only to be initiated after six months from today onwards. The revision petition is disposed of accordingly.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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25th September, 2007